

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

KRISTOFER MIKAL WRIGHT,

Plaintiff,

vs.

YELLOWSTONE DEPUTY MIKE
LINDER, CORRECTIONAL
OFFICER MUNTER, CHRISTOPHER
CARUSO, SAM BOFTO, KIMBERLY
BAISCH, LESTER RUNS ABOVE,
TAMARA OWENS, JANET GRIFFIN,
VANESSA READY, and VICTORIA
SCOTT,¹

Defendants.

CV 17-00090-BLG-SPW-TJC

ORDER AND FINDINGS AND
RECOMMENDATIONS OF UNITED
STATES MAGISTRATE JUDGE

Plaintiff Kristofer Wright is proceeding in forma pauperis pursuant to 28 U.S.C. § 1915 and therefore the Court has the responsibility of having the Amended Complaint properly served on Defendants. *See Puett v. Blandford*, 912 F.2d 270, 275 (9th Cir. 1990).

By Order dated April 8, 2019, this Court required a number of Defendants including Nurse Janet Griffin, Nurse Kimberly Baisch, and Lester Runs Above to

¹The case style has been amended to reflect the remaining defendants in this action.

respond to Mr. Wright's Amended Complaint. (Doc. 13.) The request for waiver of service of summons addressed to these Defendants at the addresses provided in the Amended Complaint was returned as undeliverable on April 15, 18 and 19. (Docs. 14-16.) On April 19, 2019, the Court issued an Order requiring Mr. Wright to provide a service address for Defendants Runs Above, Baisch, and Griffin. (Doc. 17.) Mr. Wright provided addresses in a May 6, 2019 filing (Doc. 19) but the order and request for waiver sent to Defendants Runs Above and Baisch at those addresses were also returned to the Court as undeliverable. (Docs. 36, 38.) on April 18, 2019. (Doc. 15.)

The Court has now attempted to request waivers of service from Defendants Runs Above and Baisch on two separate occasions and the information provided by Mr. Wright has been inaccurate. Accordingly, on August 13, 2019, this Court issued an Order for Mr. Wright to show cause why Defendants Runs Above and Baisch should not be dismissed without prejudice for failure to serve pursuant to Federal Rule of Civil Procedure 4(m). Mr. Wright did not respond. Defendants Runs Above and Baisch should therefore be dismissed for failure to serve.

The request for waiver sent to Nurse Griffin was not returned but the time for Nurse Griffin to waive service and answer the Amended Complaint has run and Nurse Griffin has not responded. Pursuant to 28 U.S.C. § 1915(d), the Court

will require the United States Marshals Service to personally serve the Amended Complaint on Nurse Griffin.

Based upon the foregoing, the Court issues the following:

ORDER

1. The Clerk of Court shall issue summons to Janet Griffin.

2. The Clerk of Court shall provide the following documents to the United States Marshals Service:

- * the Summons;
- * the Amended Complaint (Doc. 11); and
- * this Order.

3. The United States Marshals Service or its designated agent shall personally serve Defendant Janet Griffin, 1720 Clark Avenue, Billings, Montana 59102-4041. Service by certified mail is not sufficient. Service shall be made within ninety (90) days of the date of this Order. If service is not made within that time, the Marshals Service may request an extension of time to serve by filing an affidavit with the Court explaining the circumstances. If service is not possible, the Marshals Service shall file an affidavit with the Court explaining the circumstances. In either case, the Marshals Service shall mail a copy of any affidavit or request to Plaintiff Kristopher Wright, P.O. Box 802, Cody, WY 82414.

4. At all times during the pendency of this action, Mr. Wright shall immediately advise the Court and opposing counsel of any change of address and its effective date. Failure to file a notice of change of address may result in the dismissal of the action for failure to prosecute pursuant to Fed.R.Civ.P. 41(b).

Further, the Court issues the following:

RECOMMENDATIONS

Defendants Runs Above and Baisch should be DISMISSED WITHOUT PREJUDICE for failure to serve pursuant to Rule 4(m) of the Federal Rules of Civil Procedure.

NOTICE OF RIGHT TO OBJECT TO FINDINGS & RECOMMENDATIONS AND CONSEQUENCES OF FAILURE TO OBJECT

The parties may file objections to these Findings and Recommendations within fourteen (14) days after service (mailing) hereof.² 28 U.S.C. § 636. Failure to timely file written objections may bar a de novo determination by the district judge and/or waive the right to appeal.

This order is not immediately appealable to the Ninth Circuit Court of

²Rule 6(d) of the Federal Rules of Civil Procedure provides that “[w]hen a party may or must act within a specified time after being served and service is made under Rule 5(b)(2)(C) (mail) . . . 3 days are added after the period would otherwise expire under Rule 6(a).” Therefore, since Mr. Wright is being served by mail, he is entitled an additional three (3) days after the period would otherwise expire.

Appeals. Any notice of appeal pursuant to Fed.R.App.P. 4(a), should not be filed until entry of the District Court's final judgment.

DATED this 10th day of October, 2019.

/s/ Timothy J. Cavan
Timothy J. Cavan
United States Magistrate Judge